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## MEMORANDUM

TO: Johnny Greene, Executive Director  
Office of Mine Safety and Licensing

FROM: Emily Caudill *EC*  
Regulations Compiler

RE: Acknowledgement of Proposed Administrative Regulation and/or Amendment – 805 KAR 8:060

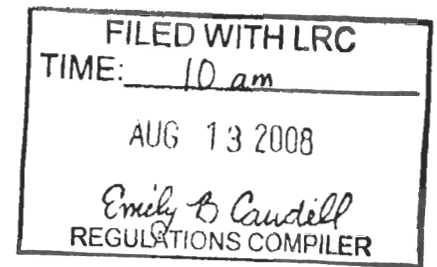
DATE: August 13, 2008

A copy of the administrative regulation listed above is enclosed for your files. This administrative regulation is **tentatively** scheduled for review by the Administrative Regulation Review Subcommittee at its **October 2008**, meeting. We will notify you of the date and time of this meeting when it has been scheduled.

Pursuant to KRS 13A.280, **if** a public hearing is held or you receive written comments on this ordinary administrative regulation, the Statement of Consideration for this ordinary administrative regulation is due by noon on **October 15, 2008**, please reference KRS 13A.270 and 13A.280 for other requirements relating to public hearings and the Statement of Consideration.

If you have any questions, please do not hesitate to contact me at (502) 564-8100.

Enclosures



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Office of Mine Safety and Licensing

4 (Amendment)

5 805 KAR 8:060. Criteria for the imposition and enforcement of sanctions against licensed  
6 premises.

7 RELATES TO: KRS 351.010(1)(m), 351.1041, 351.175, 351.194, 352.010-352.550, EO  
8 2008-507 and 2008-531

9 STATUTORY AUTHORITY: KRS 351.025(2), 351.070(13), 351.070(15), 352.180(4)

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.070(13) authorizes the  
11 Secretary of the Environmental and Public Protection Cabinet to promulgate administrative  
12 regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS  
13 351.025(2) requires the Department for Natural Resources to promulgate administrative  
14 regulations that establish comprehensive criteria for the Mine Safety Review Commission's  
15 imposition of penalties against licensed premises for violations of Kentucky mine safety laws that  
16 place miners in imminent danger of serious injury or death. KRS 351.070(15) requires the Cabinet  
17 to promulgate administrative regulations providing for the manner and method of assessing  
18 penalties by the Commissioner of the Department for Natural Resources against licensed facilities  
19 for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction  
20 plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or  
21 serious physical injury. KRS 352.180(4) requires the imposition of civil

monetary penalties and other sanctions for failure to comply with the reporting requirements of KRS 352.180. EO 2008-507 and 2008-531, effective June 16, 2008, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environment Cabinet. This administrative regulation establishes the criteria for the revocation, suspension, or probation of a mine's license, and the imposition of civil monetary penalties against a licensed premises.

Section 1. Definitions. (1) "First offense" means the first violation by a licensed premises of a mine safety law that [which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan, mine seal construction plans, [or] mine ventilation plan, or violations pertaining to unsafe working conditions that may [which could] lead to imminent danger or serious physical injury.

(2) "Licensed facility" or "licensed premises" means "licensee", as defined by KRS 351.010(1)(o) and 352.010(1)(s). [~~KRS 351.010(1)(m) and 352.010(1)(r).~~]

(3) "Mine ventilation plan" means the ventilation plan, including any revisions as approved by the United States Mine Safety and Health Administration.

(4) "Related successor" means an entity that obtains a license for a mine, if that entity is linked by common legal or equitable ownership through one (1) or more owners, to a previous licensee for that same mine or location.

(5) "Second offense" means the second violation by a licensed premises of a mine safety law that [which] places a miner in imminent danger of serious physical injury or death, as adjudicated by the Mine Safety Review Commission, including failure to comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof control plan, mine

1 seal construction plans, [or] mine ventilation plan, or violations pertaining to unsafe working  
2 conditions that may [which-could] lead to imminent danger or serious physical injury.

3 (6) "Subsequent offense" means a [any] violation beyond the third offense by a licensed  
4 premises of a mine safety law that [which] places a miner in imminent danger of serious physical  
5 injury or death, as adjudicated by the Mine Safety Review Commission, including failure to  
6 comply with the reporting requirements set forth in KRS 352.180(1), or the violation of a roof  
7 control plan, mine seal construction plans, [or] mine ventilation plan, or violations pertaining to  
8 unsafe working conditions that may [which-could] lead to imminent danger or serious physical  
9 injury.

10 (7) "Third offense" means the third violation by a licensed premises of a mine safety law  
11 that [which] places a miner in imminent danger of serious physical injury or death, as adjudicated  
12 by the Mine Safety Review Commission, including failure to comply with the reporting  
13 requirements established [set-forth] in KRS 352.180(1), or the violation of a roof control plan,  
14 mine seal construction plans, [or] mine ventilation plan, or violations pertaining to unsafe working  
15 conditions that may [which-could] lead to imminent danger or serious physical injury.

16 (8) "Unsafe working conditions" means a condition that involves a potential hazard that  
17 may reasonably be expected to cause a miner to be placed in danger of injury or death.

18 Section 2. Criteria for the Imposition and Enforcement of Sanctions Against Licensed  
19 Premises for Violations of Mine Safety Laws. (1)(a) If a licensed premises violates a [any] mine  
20 safety law that [which] places a miner in imminent danger of serious physical injury or death,  
21 which is a first offense, as adjudicated by the Kentucky Mine Safety Review Commission, the  
22 commission may place the licensed premises on probation for a period of time to be determined by  
23 the commission, pursuant to KRS 351.194(5), and in proportion to the seriousness of the violations

1 and the facts of the case. (b) The commission may also impose a civil monetary penalty against the  
2 licensed premises not to exceed the gross value of the production of the licensed premises for up to  
3 ten (10) working days, in accordance with the factors established in KRS 351.194(7).

4 (2)(a) If a licensed premises is placed on probation for a first offense violation pursuant to  
5 subsection (1) of this section, the commission may impose the terms of the probation, and it may  
6 impose penalties for the violation of the terms of probation, including the suspension or revocation  
7 of the mine's license.

8 (b) If the licensed premises satisfies the terms of its probation, the probation shall  
9 automatically expire at the end of the probationary period.

10 (3)(a) The department may file charges against a licensed premises for a [any] alleged  
11 violation of its probationary terms.

12 (b) Hearings regarding the allegations shall be conducted by the Kentucky Mine Safety  
13 Review Commission, pursuant to 825 KAR 1:020.

14 (4)(a) If a licensed premises violates a [any] mine safety law that ~~[which]~~ places a miner in  
15 imminent danger of serious physical injury or death which is a second offense as adjudicated by  
16 the Kentucky Mine Safety Review Commission, the commission may suspend or revoke the  
17 mine's license for a period of not less than two (2) calendar years, up to and including revocation,  
18 pursuant to KRS 351.194(5) and (6), and in proportion to the seriousness of the violations and the  
19 facts of the case.

20 (b) The commission may also impose a civil monetary penalty against the licensed  
21 premises not to exceed the gross value of the production of the licensed premises for up to ten (10)  
22 working days, in accordance with the factors established in KRS 351.194(7).

1           (5)(a) If a mine license is suspended for a second offense violation pursuant to subsection  
2           (4) of this section, it shall be automatically reinstated at the end of the period of suspension.

3           (b) If the mine's license is revoked, the licensed premises may apply to the Office of Mine  
4           Safety and Licensing for the reinstatement of its mine license at the end of the revocation period.  
5           The Office of Mine Safety and Licensing may grant or deny the application.

6           (c) The office shall grant the application only if the licensed premises is in full compliance  
7           with ~~[any]~~ orders of the Mine Safety Review Commission and KRS 351.175.

8           (6)(a) Upon the adjudication by the Mine Safety Review Commission of a third offense by  
9           a licensed premises for a violation of a ~~[any]~~ mine safety law ~~that~~ ~~[which]~~ places a miner in  
10          imminent danger of serious physical injury or death, the commission shall revoke the mine's  
11          license for a period of not less than three (3) calendar years, up to and including a permanent  
12          revocation without ~~[with-no]~~ possibility of reinstatement, pursuant to KRS 351.194(5) and (6) and  
13          in proportion to the seriousness of the violations and the facts of the case.

14          (b) If the revocation is for a period of less than a permanent revocation without ~~[with-no]~~  
15          possibility of reinstatement, the licensed premises may apply to the Office of Mine Safety and  
16          Licensing for the reinstatement of its mine license at the end of the revocation period.

17          (c) The Office of Mine Safety and Licensing may grant or deny the application. The office  
18          shall grant the application only if the licensed premises is in full compliance with ~~[any]~~ orders of  
19          the Mine Safety Review Commission and KRS 351.175.

20          (d) If a third offense is committed by a licensed premises, the commission may also impose  
21          a civil monetary penalty against the licensed premises not to exceed the gross value of the  
22          production of the licensed premises for up to ten (10) working days, in accordance with the factors  
23          established in KRS 351.194(7).

1           (7)(a) If a licensed premises commits a violation of a ~~[any]~~ mine safety law ~~that~~ ~~[which]~~  
2 results in the death of a miner, whether the violation is first or subsequent offense, the Mine Safety  
3 Review Commission may suspend or revoke the mine's license, including permanent revocation of  
4 the license without the possibility for reinstatement, pursuant to KRS 351.194(5) and (6) and in  
5 proportion to the seriousness of the violations and the facts of the case.

6           (b) If the commission suspends the mine's license, it shall be automatically reinstated at the  
7 end of the period of suspension.

8           (c) If the commission revokes the mine's license for a period of less than a permanent  
9 revocation ~~[with no]~~ possibility of reinstatement, the licensed premises may apply to the Office of  
10 Mine Safety and Licensing for the reinstatement of its mine license at the end of the revocation  
11 period.

12           (d) The Office of Mine Safety and Licensing may grant or deny the application. The office  
13 shall grant the application only if the licensed premises is in full compliance with ~~[any]~~ Orders of  
14 the Mine Safety Review Commission and KRS 351.175.

15           (e) The commission may also impose a civil monetary penalty against the licensed  
16 premises not to exceed the gross value of the production of the licensed premises for up to ten (10)  
17 working days, in accordance with the factors established in KRS 351.194(7).

18           (8) If a licensed premises that has committed one (1) or more violations pursuant to  
19 subsection (1), (4), (6), or (7) of this section is subsequently sold or goes out of business, ~~[any]~~  
20 penalties imposed on that licensed premises for those violations shall be imposed upon ~~an~~ ~~[any]~~  
21 entity that is determined by the commission to be a related successor to the licensed premises in  
22 question, after a hearing conducted pursuant to KRS 351.194.

Section 3. Criteria for the Imposition and Enforcement of Civil Penalties Against Licensed Facilities for Violations of Roof Control Plans, Mine Seal Construction Plans, Unsafe Working Conditions, or Mine Ventilation Plans. (1) Amount of penalty. The commissioner or the commissioner's [his-or-her] designee shall assess monetary penalties to a licensed facility that [which] has been issued a noncompliance or closure order for a violation of the provisions of KRS Chapters 351 and 352 relating to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that may [could] lead to imminent danger or serious physical injury, or have resulted in serious physical injury or death, as follows:

(a) If the licensed facility has not had [no] previous violations during the previous twenty-four (24) months relating roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plans that may [could] lead to imminent danger or serious physical injury, the penalty shall be not more than \$2,500; [-]

(b) If the licensed facility has had one prior offense during the previous twenty-four (24) months relating to the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in the assessment of a penalty pursuant to this section, the penalty for a violation that may [could] lead to imminent danger or serious physical injury shall be not more than \$4,000; [.]

(c) If the licensed facility has had two (2) or more offenses relating to a violation during the previous twenty-four (24) months of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan that resulted in an assessment of a penalty pursuant to this section, the penalty for a violation that may [could] lead to imminent danger or serious physical injury shall be not more than \$5,000; [.]

(d) If the violation of the roof control plans, mine seal construction plans, unsafe working conditions, or mine ventilation plan results in the serious physical injury or death of a miner, the penalty shall be \$5,000, notwithstanding whether the licensed facility has been previously cited for such violation or assessed a penalty pursuant to this section; [:]

(e) Factors to be considered. In determining the amount of the penalty to be assessed, consideration shall be given to the following:

1. The licensed premises' cooperation with investigators;
2. The severity of the harm done, such as whether the violation resulted in:
  - a. Death;
  - b. Serious physical injury; or
  - c. The placement of an individual in imminent harm;
3. The licensed premises' acceptance of responsibility for its actions;
4. The licensed premises' history of violations;
5. The licensed premises' adjudicated violations in other states;
6. [~~Any~~] mitigating circumstances; and
7. [~~Any~~] aggravating circumstances.

(2) Notification. The commissioner or the commissioner's [~~his or her~~] designee shall notify a licensed facility that has been assessed a penalty pursuant to this section of the amount of the assessment.

(3) Service. (a) The notice of proposed penalty assessment shall be served on the licensed facility within thirty (30) days after the proposed penalty assessment is completed.

1           **(b)** Failure to serve the proposed assessment within thirty (30) days shall not be grounds for  
2 dismissal of all or part of the assessment unless the licensee proves actual and substantial prejudice  
3 as a result of the delay.

4           **(c)** Service shall be made by one (1) or more of the following methods:

5           **1.a. [(a)]** The commissioner or the commissioner's ~~[his or her]~~ designee may place a copy  
6 of the notice of proposed assessment in an envelope~~[-]~~ and address the envelope to the licensed  
7 facility at the address provided by the licensee to the Office of Mine Safety and Licensing in its  
8 most recent license application.

9           **b.** The Office of Mine Safety and Licensing shall affix adequate postage and place the  
10 sealed envelope in the United States mail as certified mail return receipt requested.

11           **c.** The Office of Mine Safety and Licensing shall maintain a record of each assessment and  
12 shall include therein the fact of mailing and the return receipt, ~~if~~ when received.

13           **d.** If the envelope is returned with an endorsement showing failure of delivery, that fact  
14 shall be entered in the record.

15           **e.** Service by certified mail shall be complete upon delivery of the envelope, upon  
16 acceptance by any person eighteen (18) years of age or older at the licensee address, upon refusal  
17 to accept by any person at the licensee address, upon the United States Postal Service's inability to  
18 deliver the assessment if properly addressed to the licensee, or upon failure to claim the assessment  
19 prior to its return to the Office of Mine Safety and Licensing by the United States Postal Service.

20           **f.** The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to  
21 claim the assessment; or

22           **2. [(b)]** The commissioner or the commissioner's ~~[his or her]~~ designee may cause the  
23 assessment, with necessary copies, to be transferred for service to a person authorized by the

Secretary, who shall serve the assessment, and the return thereon shall be proof of the time and manner of service

(4) Options of the licensed facility issued a notice of proposed assessment.

(a) Waiver. 1. The licensed facility issued a notice of proposed assessment may choose not to contest the assessment.

2. Failure to file a petition pursuant to paragraph (b) of this subsection shall be considered a waiver.

3. A final order shall be entered by the Mine Safety Review Commission finding that:

a. ~~[4.]~~ The licensed facility has waived its right to an administrative hearing on the amount of the proposed assessment;

b. ~~[2.]~~ The fact of the violation cited in the noncompliance or closure order is deemed admitted;

c. ~~[3.]~~ The proposed penalty is due and payable within thirty (30) days after the entry of the final order; and

d. ~~[4.]~~ The violation is a first, second, third or subsequent offense.

(b) Petition for administrative hearing. The licensed facility may contest the proposed assessment and fact of violation by submitting a petition for administrative hearing within thirty (30) days of the receipt of the assessment in accordance with 825 KAR 1:020.

(5) Nothing contained within this section of this administrative regulation shall be construed to impair or contravene the Office of Mine Safety and Licensing's authority to seek sanctions pursuant to Section 2 of this administrative regulation or to prevent the Mine Safety Review Commission from imposing the sanctions in Section 2 of this administrative regulation in addition to the monetary penalties assessed pursuant to this Section.

Section 4. Criteria for the Imposition and Enforcement of Sanctions Against Licensed Facilities for Failure to Comply with the Requirements for Reporting an Accident. ~~[imposition and enforcement of sanctions against licensed facilities for failure to comply with the requirements for reporting an accident.]~~ (1) General. (a) If the superintendent, mine manager, mine foreman, or a mine foreman's designee fails to comply with the reporting requirements established ~~[set forth]~~ in KRS 352.180(1), the Mine Safety Review Commission may revoke, suspend or probate the mine license for a period of time to be determined by the commission, pursuant to KRS 351.194(5), and in proportion to the seriousness of the violations and the facts of the case.

(b) The commission shall also assess a civil monetary penalty against the licensed premises of not less than ten thousand dollars nor more than \$100,000 for the failure.

(2) Point system for computing the civil monetary penalty. The Mine Safety Review Commission shall apply the point system described in this subsection to evidence produced by the Office of Mine Safety and Licensing necessary to determine the amount of civil monetary penalty to assess against the licensee pursuant to this section. Points shall be assigned as follows:

(a) Appropriateness of the penalty. 1. Up to fifteen (15) points shall be assigned for the size of the mine.

2. The size of the mine shall be based on the tonnage produced from the mine in the previous calendar year, or in the case of a mine opened or owned less than one (1) full calendar year, the tonnage prorated to an annual basis.

3. Points shall be assigned as follows:

a. ~~[1:]~~ 0-300,000 tons, zero (0) points;~~[:]~~

b. ~~[2:]~~ 300,000-500,000 tons, five (5) points;~~[:]~~

c. ~~[3:]~~ 500,000-1 million tons, ten (10) points;~~or [:]~~

d. ~~[4:]~~ Over 1 million tons, fifteen (15) points;~~;~~~~]~~

(b) History of previous violations. 1. Up to twenty (20) points shall be assigned based on the history of violations at the mine, cited against the licensee during the preceding twenty-four (24) month period.

2. Points shall be assigned as follows:

a. ~~[1:]~~ 1-5 previous violations, zero points;~~;~~~~]~~

b. ~~[2:]~~ 6-10 previous violations, five (5) points;~~;~~~~]~~

c. ~~[3:]~~ 11-20 previous violations, ten (10) points;~~;~~~~]~~

d. ~~[4:]~~ 21-30 previous violations, fifteen (15) points; or ~~;~~~~]~~

e. ~~[5:]~~ Over 30 previous violations, twenty (20) points;~~;~~~~]~~

(c) Negligence. 1. Up to twenty-five (25) points shall be assigned based on the degree of negligence the licensee exhibited in failing to report the accident.

2. Points shall be assigned as follows:

a. ~~[1:]~~ No negligence. There shall not be ~~[no]~~ negligence on the part of the licensee if it exercised diligence and could not have prevented the failure to comply with the reporting requirements. Zero points shall be assigned for no negligence;~~;~~~~]~~

b. ~~[2:]~~ Negligence. There shall be negligence if the licensee has mitigating circumstances for its failure to comply with the reporting requirements. Fifteen (15) points shall be assigned for negligence; ~~or~~ ~~;~~~~]~~

c. ~~[3:]~~ Reckless disregard. There shall be reckless disregard if the licensee exhibits the absence of the slightest degree of care in complying with the reporting requirements. Twenty- five (25) points shall be assigned for reckless disregard;~~;~~~~]~~

(d) Gravity. Gravity shall be the severity of the accident and whether persons were at risk of serious physical injury or death based on the failure to comply with the reporting requirements.

1. A total of thirty (30) points shall be assigned for gravity.

2. Points shall be assigned as follows:

a. [1.] Severity. Up to twenty (20) points shall be assigned as follows for the severity of [any] injuries:

(i) [~~a.~~] No serious physical injury occurred, zero points;[.]

(ii) [~~b.~~] A serious physical injury occurred, ten (10) points; or [.]

(iii) [~~c.~~] A fatality occurred, twenty (20) points; and [.]

b. [2.] Persons at risk of serious physical injury or death. Up to ten (10) points shall be assigned based on whether persons were at risk of serious physical injury or death by the failure to comply with the reporting requirements, and points [.] Points] shall be assigned as follows:

(i) Personnel were not [~~a. No personnel were~~] at risk, zero points; or [.]

(ii) A person was [~~b. Person(s) were~~] at risk, ten (10) points.

(3) Determination of amount of penalty. The Mine Safety Review commission shall determine the amount of penalty by converting the total number of points assigned under subsection (2) of this section to a dollar amount, according to the schedule in the following table:

POINTS	AMOUNT
0	\$10,000
5	\$15,000
10	\$20,000
15	\$25,000
20	\$30,000
25	\$35,000
30	\$40,000
35	\$45,000
40	\$50,000
45	\$55,000
50	\$60,000

<u>55</u>	<u>\$65,000</u>
<u>60</u>	<u>\$70,000</u>
<u>65</u>	<u>\$75,000</u>
<u>70</u>	<u>\$80,000</u>
<u>75</u>	<u>\$85,000</u>
<u>80</u>	<u>\$90,000</u>
<u>85</u>	<u>\$95,000</u>
<u>90</u>	<u>\$100,000</u>

[Appendix A of this administrative regulation.]

(4) Waiver of use of point system to determine civil penalty.

(a) 1. The Mine Safety Review Commission may waive the use of the point system contained in Section 4(2) of this administrative regulation to set the civil penalty, if it determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.

2. The basis for every waiver shall be fully explained and documented in the record of the case.

(b) 1. If the commission waives the use of the point system, it shall use the criteria established [set forth] in KRS 351.194(7) to determine the appropriate penalty.

2. If the commission has elected to waive the use of the point system, it shall give a written explanation for the basis for the assessment made in its Final Order.

Section 5. Incorporation of Reference. (1) "Notice of Proposed Assessment," July 12, 2006. OMSL Form No. NPA-1 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

[APPENDIX A

POINTS	AMOUNT
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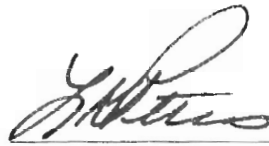
0	\$10,000
5	\$15,000
10	\$20,000
15	\$25,000
20	\$30,000
25	\$35,000
30	\$40,000
35	\$45,000
40	\$50,000
45	\$55,000
50	\$60,000
55	\$65,000
60	\$70,000
65	\$75,000
70	\$80,000
75	\$85,000
80	\$90,000
85	\$95,000
90	\$100,000

1 }

805 KAR 8:060 approved for filing.  
Pages (1-15)

8/12/08

Date

A handwritten signature in black ink, appearing to read 'L. Peters', written over a horizontal line.

Leonard K. Peters, Secretary  
Energy and Environment Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 23, 2008 at 10:00 A.M. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2008, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business September 30, 2008. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Johnny Greene, Executive Director  
Office of Mine Safety and Licensing  
1025 Capital Center Drive  
Frankfort, KY 40601  
Telephone: (502) 573-0140 Fax (502) 573-0152  
Email: Johnny.Greene@ky.gov

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 805 KAR 8:060

Contact Person: Johnny Greene, Executive Director

### **(1) Provide a brief summary of:**

**(a) What this administrative regulation does:** Establishes the imposition of sanctions, including civil monetary penalties against licensees for violations of mine safety laws that create an imminent danger of serious physical injury or death.

**(b) The necessity of this administrative regulation:** Imposition of civil monetary penalties against licensees for non-intentional violations of mine safety laws pertaining to mine seal construction plans and unsafe working conditions.

**(c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 351.025(2) authorizes the Department for Natural resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing civil monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.

**(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes.

### **(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

**(a) How the amendment will change this existing administrative regulation:** This amendment will add a definition specific to the amendment. The amendment also adds violations of a mine seal construction plans and unsafe working conditions as items that will trigger a monetary civil penalty.

**(b) The necessity of the amendment to this administrative regulation:** The 2007 General Assembly amended 351.070 (15) expanding the authority of the Commissioner to

assess monetary civil penalties for violation of mine seal construction plans and unsafe working conditions. This administrative regulation includes those items into the violations that will trigger a monetary civil penalty.

**(c) How the amendment conforms to the content of the authorizing statutes:** KRS 351.025(2) authorizes the Department for Natural resources to promulgate administrative regulations that establish comprehensive criteria for the Mine Safety Review Commission to impose sanctions, including civil monetary penalties against licensed premises for violations of mine safety laws that place miners in imminent danger of serious injury or death. KRS 351.070(15) authorizes the cabinet to promulgate administrative regulations providing for the manner and method of assessing monetary penalties by the Commissioner of the Department for Natural Resources against licensed facilities for violations of KRS Chapters 351 and 352 that relate to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. KRS 352.180(4) authorizes the imposition of civil monetary penalties and other sanctions against licensees for failure to comply with the reporting requirements of KRS 352.180.

**(d) How the amendment will assist in the effective administration of the statutes:** This administrative regulation informs all licensees regulated by the Office of Mine Safety and Licensing of the policies and procedures for the imposition of penalties and sanctions against licensees for violations of mine safety laws that lead or could lead to imminent danger of serious physical injury or death in order to protect the health and safety of miners, in conformity with the express intent of the statutes.

**(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** All individuals and entities engaged in the mining of coal in the Commonwealth will be affected by this administrative regulation.

**(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**

**(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** Licensees will be subjected to the imposition of sanctions, including civil penalties for violations of mine seal construction plans and unsafe working conditions that could lead to imminent danger or serious physical injury.

**(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** Entities that comply with mine safety laws will not be subject to any additional costs.

**(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** Compliance with mine safety laws will reduce the number of incidents that could result in an imminent danger, serious physical injury, or death.

**(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**

**(a) Initially:** The costs associated with introducing additions to the penalty assessment process will be minimal and will be absorbed by the agency.

**(b) On a continuing basis:** The number of administrative hearings may increase, but can be incorporated into current operations without additional staff or resources at this time.

**(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** Agency funds.

**(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:** There is no need for an increase in funding or fees to implement this amendment.

**(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:** This administrative regulation does not directly or indirectly establish or increase any fees.

**(9) TIERING: Is tiering applied? (Explain why or why not)**

Yes. Tiering was applied as to the size of the mine based on coal tonnage produced in determining the imposition and enforcement of sanctions for failure to comply with accident reporting.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

**Admin. Regulation No.**805 KAR 8:060      **Contact Person:** Johnny Greene, Executive Director

**1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes ☒ No

If yes, complete questions 2-4.

**2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?** The Office of Mine Safety and Licensing and the Mine Safety Review Commission.

**3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.** As contained in the enacted House Bill 207 of the 2007 General Assembly, the amended statute, KRS 351.070, allows for the addition of mine seal construction plans and unsafe working conditions as violations that will trigger monetary civil penalties.

**4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.** This regulation will not affect expenditures or revenues.

**(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?** Revenue generated from the penalty assessments for violations of mine safety laws is unpredictable.

**(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?** Unchanged from the first year.

**(c) How much will it cost to administer this program for the first year?** The costs associated with introducing additional violations to the penalty assessment process will be absorbed by the agency without additional funds.

**(d) How much will it cost to administer this program for subsequent years?** The costs associated with administering this program are minimal.

**Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.**

**Revenues (+/-):** The agency cannot determine how many penalties will be assessed in a given year. Therefore, revenues generated from penalty assessments will be unpredictable.

**Expenditures (+/-):** NA

**Other Explanation:** NA